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Supreme Court, U.S.
FILED
OCT 28 1988
JOSEPH F. SPANIOL, JR.
CLERK

No. 88-577

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

ISSA ELIAS SAMAAN,
Petitioner,
vs.
F. NIAKAN, E. NIAKAN, BEN NIAKAN, BOB NIAKAN, BETTY NIAKAN, and UNION OIL COMPANY OF CALIFORNIA
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEAL OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION FIVE

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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17 pp

QUESTIONS PRESENTED

Should the Court review a California intermediate appellate court decision holding that federal courts have exclusive jurisdiction over claims under the Petroleum Marketing Practices Act ("PMPA"), 15 U.S.C. § 2801 *et seq.*, where:

(1) The decision conflicts with no federal circuit court holding, nor any holding of a state court of last resort and raises no substantial federal issue;

(2) The only conflicting analysis, endorsed by petitioner, is by an intermediate Pennsylvania court, has never been followed by any other court, and may disappear because the highest court of Pennsylvania has decided to review it;

(3) Reversal of the decision would not even be dispositive between the parties because the trial court correctly held as a matter of law that respondent did not violate the PMPA; and

(4) This Court recently denied a Petition for Writ of Certiorari brought on the identical issue.

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

INTRODUCTION AND SUMMARY OF ARGUMENT

This Court has recently considered and rejected a Petition for Writ of Certiorari raising the issue of whether federal jurisdiction over PMPA claims is exclusive. (*Kreisher v. Mobil Oil Corporation*, Supreme Court of the United States, No. 88-195). This Petition includes no different grounds for review of this issue.

Despite Petitioner's numerous, and in many instances misleading, citations to cases, he has failed to establish that there is anything for this Court to review: An intermediate California court followed a well-reasoned

federal district court decision; no circuit court has addressed the issue; and no "state court of last resort" has addressed the issue.

STATEMENT OF THE CASE

This is an action between a service station franchisee, Petitioner Issa Elias Samaan ("Samaan"); the owners of the service station property, Respondents F. Niakan, E. Niakan, Ben Niakan, Bob Niakan and Betty Niakan ("Niakan"); and a petroleum marketing franchisor, Union Oil Company of California ("Union").[1]

The action was originally commenced by Niakan for the purpose of seeking a declaration that Samaan had no further interest in the service station premises after September 30, 1983, the date upon which Samaan's franchise expired by its terms. In response to the complaint, Samaan cross-complained against Niakan, Union and the prior owners of the property (the "Sheffields") alleging that by virtue of the federal Petroleum Marketing Practices Act, 15 U.S.C. §2801 *et seq.* ("PMPA"), he had a right to occupy the premises after the expiration of his franchise.

The gravamen of Samaan's causes of action against Union is that Union wrongfully failed to renew Samaan's franchise because it relinquished its rights to the leasehold estate upon which the franchised station was located.

The First Cause of Action of Samaan's Second Amended Cross-Complaint is against Union for wrongful nonrenewal of his franchise under the PMPA. The Second Cause of Action is for declaratory relief against

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[1] Union Oil Company of California is a fictitious business name of Unocal Corporation. Its only non-wholly owned subsidiary is Union Exploration Partners, Ltd.

all defendants, but Samaan dismissed this Cause of Action with prejudice at the conclusion of trial. The Third, Fourth and Fifth Causes of Action are against Union for alleged violations of the California Investment Law and the California Unfair Trade Practices Act. Samaan's Sixth Cause of Action is against Union for breach of the implied covenant of good faith and fair dealing; and the Seventh Cause of Action for breach of contract. Finally, the Eighth Cause of Action is against Union for misrepresentation. However, all causes of action are centered upon the alleged wrongful failure to renew Samaan's franchise.

Samaan appealed from the judgment entered in favor of Union on the First, Fifth, Sixth, Seventh and Eighth Causes of Action of the Second Amended Cross-Complaint. Samaan abandoned any claim as to the judgment for Union on the Third and Fourth Causes of Action of the Cross-Complaint, apparently conceding the correctness of the Court's ruling.

Subsequent to the entry of the trial court's judgment, the United States District Court for the Central District of California held that federal courts have exclusive jurisdiction over claims brought under the PMPA. Based upon this decision, Union urged, in response to Samaan's appeal, that the California state courts lack jurisdiction over PMPA claims. The California Court of Appeal agreed.

Samaan then sought review in the California Supreme Court. The California Supreme Court denied review on May 4, 1988.

Samaan requested and was granted two extensions of time within which to file his Petition for Writ of Certiorari in this Court, which was ultimately timely filed.

REASONS FOR DENYING THE WRIT

I. THIS CASE DOES NOT MEET THE CRITERIA FOR CERTIORARI.

Samaan asserts that review is appropriate because there is a "conflict between state courts on a federal issue." Petition at 3. However, Samaan fails to establish the required conflict.

Supreme Court Rule 17, which defines the "considerations governing review on certiorari," states that "certiorari may be proper" when a state court *of last resort* has decided a federal question in a way in conflict with the decision of another state court *of last resort* or of a *federal court of appeals*." Rule 17.1(b) (emphasis added).

The jurisdictional issue here has not been addressed by a "state court of last resort," in this case or any other. Nor has the issue been addressed by a single "federal court of appeals." Indeed, the thrust of Samaan's Petition is that the decision below agrees with a decision of a California federal district court, rather than with the decision of a Pennsylvania intermediate appellate court. *Compare, Rustom v. Atlantic Richfield Co.*, 618 F.Supp. 210 (C.D. Cal. 1985) with *Johnson v. Mobil Oil Corp.*, 528 A.2d 155, 163-64, (Pa. Super. 1987).

In an attempt to bolster his claim of conflict, Samaan cites eleven state court cases for the proposition that "every published state court PMPA opinion has found or assumed concurrent jurisdiction. . ." Petition at 38.

In fact, the first case (*Adams v. Iowa Oil Co.*, Bus. Fran. Guide (CCH), ¶ 8008 (Iowa S. Ct. 1983) is *not* a published opinion; five of the opinions [*Davis. Gulf Oil Corp.* (D.C. App. 1984) 485 A.2d 160, *Arco Petroleum Products Co. v. Williams* (1986) 146 Ill.App.3d 218, 496 N.E.2d 1098, *Bates v. Chevron* (Ga. App. 1979) 260

S.E.2d 367, *Walters v. Chevron U.S.A., Inc.* (Ga. App. 1980) 269 S.E.2d 495, and *Consumer's Pet. of Conn.* (Conn. Super. 1982) 452 A.2d 123] merely deal with PMPA claims as affirmative defenses to an eviction action; two of the opinions [*Frankard v. Amoco Oil* (Wis. App. 1983) 342 N.W.2d 247 and *ERA Enterprises, Inc. v. Gulf Oil Corp* (La. App. 1987) 506 So.2d 160] were common law actions that did not address PMPA jurisdiction because the PMPA was only incidentally involved and no affirmative PMPA claim was made; two of the opinions [*DaCosta's Automotive, Inc. v. Birchwood Plaza Shell, Inc.* (1984) 482 N.Y.S.2d 832 and *Ricco v. Shell Oil Co.* (N.J. Super. 1981) 434 A.2d 1151] reject the PMPA claims as a matter of substantive law with no discussion of jurisdiction; and one opinion [*Thomas v. Amoco Oil Co.* (La. App. 1984) 455 So.2d 1187, *rev. denied* 460 So.2d 612] simply holds that the PMPA does not apply because there has been no termination of a franchise agreement.

Furthermore, the *Johnson* case, on which Samaan heavily relies, is not final: The Pennsylvania Supreme Court has granted review of the jurisdiction issue. *See Johnson v. Mobil Oil Corp.*, 544 A.2d 445 (Pa. July 18, 1988).

Thus, the best that can be said for Samaan's analysis is that there is a possibility of a future conflict that might at some unknown time be appropriate for this Court to address.

II. THERE IS NO SUBSTANTIAL FEDERAL ISSUE TO RESOLVE.[2]

A. Federal Court Jurisdiction Over PMPA Claims is Exclusive.

The PMPA provides that parties may seek redress for violations of the PMPA "in the district court of the United States in any judicial district in which the principal place of business of such franchisor is located or in which such franchisee is doing business . . ." 15 U.S.C. § 2805(a). The PMPA goes on to incorporate federal procedural standards, stating that damages are available "consistent with the Federal Rules of Civil Procedure," and applying Rule 65 standards for the issuance of injunctions. 15 U.S.C. §§ 2805(d)(1)(A), 2805(b)(2). Thus, the plain terms of the statute contemplate federal, not state, jurisdiction over PMPA claims.

As the *Rustom* court points out, there are strong indications in the legislative history of the PMPA as well as in the provisions of the Act itself which provide the "unmistakable implication" of Congressional intent that federal courts have exclusive jurisdiction over actions brought under the PMPA. (618 F.Supp. at 212)

There is a conspicuous absence, in both the Senate and House Reports, of reference to the bringing of a PMPA claim in state court: "The provisions of Title I are enforceable by private civil action in U.S. District Court." S.Rep. No. 95-731, 95th Cong. 2d Sess.,

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[2] Samaan also requests review of the substantive rulings of the trial court. Samaan's arguments were firmly rejected by the Court of Appeal: "We have read the record . . . There is substantial evidence to support the trial court's directed verdict, and Appellant's other contentions are meritless." *Niakan v. Samaan* (1988) 199 Cal.App.3d 716, 720 fn. 3.

reprinted in, 1978 U.S. Code Cong. & Ad. News at 874; H.R. Rep. No. 95-161, 95th Cong. 1st Sess. 14 (1978).

As the Ninth Circuit reasoned in *Valenzuela v. Kraft, Inc.* (9th Cir. 1984) 739 F.2d 434, 436,

> "Although not determinative, the absence of reference to the state courts combined with Congress' affirmative references to the federal courts, suggests an intent to make federal jurisdiction exclusive."

The *Valenzuela* court based its holding on references in the legislative history only to the maintenance of an action in federal court and the incorporation of the standards of Fed.R.Civ.P. 65 applied to the issuance of preliminary injunctions.

This Court has held that federal courts have exclusive jurisdiction over actions under the Sherman and Clayton Acts, although those statutes provide only that actions *may* be brought in federal courts. *General Investment Co. v. Lake Shore and Michigan Railroad* (1922) 260 U.S. 261, 286-287.

In summary, the PMPA is a federal act applying federal remedies, extensively interpreted by federal courts. Jurisdiction, therefore, properly belongs exclusively in federal court.

B. State Courts May Not Grant Affirmative Relief Based on Claims for Which Federal Jurisdiction is Exclusive.

Although state courts *may* properly consider claims, over which federal jurisdiction is exclusive, which are raised collaterally or defensively, state courts may not grant affirmative relief thereon. *Andrea Theatres, Inc. v. Theatre Confections, Inc.* (2d Cir. 1986) 787 F.2d 59;

Central States, etc. v. Old Security Life Insurance Co. (7th Cir, 1979) 600 F.2d 671, 676.

Even a defendant prevailing on such federal *defenses* in state court would still have to return to federal court to seek affirmative relief. *Andrea Theatres, supra.*, at 63.

Samaan's claims were raised in a *cross-complaint* against Union and sought affirmative relief in the form of a permanent injunction and damages. Such claims can hardly be said to have been raised defensively.

C. The Preemptive Provisions of the PMPA Are Clear and Have Been Widely Held to Preempt All of Samaan's State Causes of Action.

Noticeably absent from Samaan's argument on the preemption issue is any reference to the many decisions, including one recent California Court of Appeal decision (fully briefed by Union below), which interpret the scope of 15 U.S.C. § 2806, the section of the PMPA which provides for preemption of any inconsistent state law or regulation. *See, e.g., Mobil Oil Corp. v. Superior Court of the County of Santa Clara* (1987) 189 Cal. App.3d 485 (PMPA preempts common law actions that are in reality actions for wrongful termination); *Ted's Tire Service v. Chevron* (D. Conn. 1979) 470 F.Supp. 163 (PMPA preempts inconsistent state law); *Huth v. B.P. Oil, Inc.* (D.C. Maryland 1983) 555 F.Supp. 191 (PMPA preempts common law actions for breach of contract and fraud); *Continental Enterprises v. American Oil Co.* (W.D. Miss. 1986) 628 F.Supp. 126 (PMPA preempts contract action as well as actions for tortious interference and fraud); *Siecko v. Amerada Hess Corporation* (E.D. Pa. 1983) 569 F.Supp. 768 (PMPA preempts action for breach of fiduciary duty).

The trial court correctly found, based on ample legal authority, that Samaan's state causes of action were preempted by the PMPA.

CONCLUSION

For the reasons stated, the Petition should be denied.

Respectfully submitted,

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